Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition for Rulemaking To Determine The Terms And Conditions Under Which Tier 1 LECs Should Be Permitted to Provide InterLATA Telecommunications Services	)	RM-8303

COMMENTS OF LDDS COMMUNICATIONS, INC.

LDDS Communications, Inc. ("LDDS"), by its attorneys, hereby submits its comments regarding the above-captioned Petition filed jointly by Bell Atlantic, BellSouth Corporation, NYNEX Corporation, Pacific Telesis Group and Southwestern Bell Corporation (hereafter "RBOCs").[1] As discussed herein, the RBOCs will retain their local exchange bottleneck monopoly in most access markets and the concomitant ability to impede interLATA competition for the foreseeable future. Consequently, the Petition is premature and must be denied.

[1] LDDS is a member of the Competitive Telecommunications Association ("CompTel") and supports the CompTel Comments filed in this proceeding today. In addition, LDDS offers the comments contained herein.

I. The Question of FCC Safeguards For RBOC InterLATA Services Is Premature

The Joint RBOC Petition seeks an FCC rulemaking intended to establish safeguards for RBOC provision of interLATA services. In so doing, the RBOCs rely on a 1987 pleading of the Commission to assert that the agency has concluded that RBOC interLATA entry would serve the public interest. This premise, which underlies the entire Joint RBOC Petition, cannot go unchallenged. The Commission has never compiled a record to support any conclusions about the effects of RBOC interLATA services on consumers or on competitors. Certainly any views stated in 1987 cannot simply be taken as operative today, with no reexamination of the marketplace or analysis of the effects.

The FCC's views on the basic question -- should RBOC interLATA services be permitted -- cannot be assumed to be the same today as in 1987. Indeed, the Joint RBOC Petition in effect is seeking to impute the opinions of a prior FCC administration to the present officeholders as part of an overall strategy to escape the constraints of the MFJ. Now that the Administration and the Congress are controlled by the same political party, however, the RBOCs cannot simply assume that the agency is able or willing to play the same role as in 1987.

The Joint RBOC Petition attempts to direct attention toward safeguards and to divert it away from the more fundamental issue. This strategy seems inappropriate for today's FCC, however, when both the Congress and the Clinton Administration are still examining the underlying question of RBOC entry. The Administration is conducting a study of the telecommunications marketplace, including the MFJ restraints, through the National Telecommunications and Information Administration.[2] Further, the Congress is considering legislative proposals which deal with MFJ relief,[3] with additional major initiatives likely to be introduced. In this context, it seems inappropriate for the RBOCs to ask the FCC to declare its uncritical support for RBOC interLATA entry and proceed to the issue of safeguards. Especially in view of the difficulty the Commission faces in meeting its many day-to-day responsibilities,[4] dedication of agency

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[2] See "NTIA to Conduct 'Top to Bottom' Review of MFJ, Cable Telco Policies," Washington Telecom Week 7-8 (July 23, 1993).

[3] See, e.g. S.1086, Telecommunications Infrastructure Act of 1993 (introduced by Senator J. Danforth - R. Mo.).

[4] See, e.g., Statement of James H. Quello, FCC Chairman, Before the Subcommittee on Commerce, Justice, State, and Judiciary, Committee on Appropriations, United States House of Representatives, March 25, 1993 at 2 ("[d]uring the last dozen years the FCC has seen its ability to function effectively stretched to the breaking point by budget constraints"); Statement of James H. Quello, FCC Chairman, Before the Subcommittee on Telecommunications and Finance, Committee on Energy and Commerce, United States House of Representatives, June 17, 1993 at 16 ("I cannot say more plainly that this is an agency already stretched to and in many places beyond, its capacity."); "Telecommunications: FCC's Oversight Efforts to Control Cross-Subsidization" (February, 1993) (the U.S. General Accounting Office observed that staffing at the FCC was insufficient in 1987 when it first studied the ability of the agency to provide positive assurance that rate payers are protected from cross-subsidization, and concluded that staffing has become even

resources to a rulemaking which would have no current application or effect and may be mooted by legislation would not seem to be a wise policy.

Importantly, however, any proceeding which is opened to examine RBOC interLATA services should first examine the underlying issue of the benefits and detriments of such entry. Until this analysis is completed, it is impossible to propose safeguards which can reasonably be expected to fulfill their intended purpose. Since that review already is underway at NTIA and in the Congress, the FCC should dismiss the Joint RBOC Petition and await the results of those studies.

II. If and When RBOCs Are Permitted InterLATA Entry, Strict Structural Safeguards Must Apply

A. No Safeguards Would Be Adequate Today

Under the current market conditions, no regulatory safeguards would be sufficient to prevent access discrimination and cross-subsidies that would impede interLATA competition. As shown by the record compiled recently on Ameritech's similar Petition,[5] there are numerous ways that the RBOCs could engage in anticompetitive conduct.

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more inadequate in the meantime).

[5] Petition for a Declaratory Ruling and Related Waivers to Establish a New Regulatory Model for the Ameritech Region, filed by Ameritech on March 1, 1993 ("Ameritech Petition"); see Public Notice, DA 93-481, released Apr. 27, 1993 (establishing pleading cycle for the Ameritech Petition).

For example, the RBOCs readily could provide favorable access pricing to their own long distance affiliates. Such preferential treatment could fall under the guise of "market" pricing of "new" access services that are practically available only to themselves, strategically designed volume discounts that bundle intraLATA and interLATA access, or term discounts that require a commitment period attractive only to their captive IXCs. Similarly, the RBOCs could price tandem-routed transport in a manner that drives out smaller IXCs in advance of their own entry into the market, and could shift costs attributable to their long distance operations into the "competitive" access price cap basket.

In fact, IXCs have been in a strenuous public debate with the RBOCs for months over RBOC proposals to restructure their access transport costs in a manner advantageous to AT&T.[6] The incentives for other rate revisions to favor an RBOC-owned IXC would obviously be even greater.

The potential for RBOC anticompetitive conduct is not merely speculative. A coalition of parties opposed to RBOC MFJ relief has compiled a 30 page booklet detailing such

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[6] See generally Transport Rate Structure and Pricing, CC Docket No. 91-213, Order and Further Notice of Proposed Rulemaking, 6 FCC Rcd 5341 (1991), Report and Order and Further Notice of Proposed Rulemaking, 7 FCC Rcd 7006 (1992), recon., First Memorandum Opinion and Order on Reconsideration, FCC 93-366 (released July 21), recon., Second Memorandum Opinion and Order on Reconsideration, FCC 93-403 (Aug. 18, 1993).

practices. A copy of this material is attached to these Comments for inclusion in the record. (Attachment A.)

B. If RBOC Entry Is Permitted At Some Future Date, Strict Structural Safeguards Will Be Necessary

Several years from now, if significant local and intraLATA competition does develop, and Congressional or court action makes it appropriate for the Commission to consider parameters for RBOC interLATA entry, strict structural safeguards will be required. These safeguards must include, at a minimum, the following:

1. Fully separate subsidiaries.

Despite the Joint RBOC Petition's suggestion that accounting separation is sufficient only full structural separation could be expected to have the proper restraining effect. This would include separate personnel and Boards of Directors, separate books of account, separate facilities (including transmission), separate advertising and administration, and strict affiliated transaction rules.

2. Equal access provisioning and pricing.

A key element of any affiliate transaction rules would be a ban on discrimination in the type, quality or price of local access services. Any RBOC-affiliated IXC would have to obtain service on the same price, terms and conditions as all others. To prevent abuses, an unbundling of access services similar to the Commission's open network architecture plan likely would be required.

3. CPNI

All customer proprietary network information held by an RBOC would need to be disclosed to all IXCs on the same terms and conditions as for an RBOC-affiliated IXC.

4. Annual audits.

An important enforcement mechanism for these rules would be annual audits of the books of account and of compliance with all other separation requirements.

5. Dominant carrier regulation of RBOC affiliates

Until the Commission gained experience with the effectiveness of the structural rules, any RBOC-affiliated IXC should be regulated as a dominant carrier. Full tariff cost justification, for example, would help to ensure that such companies were in compliance with the separation requirements.

CONCLUSION

For the foregoing reasons, the RBOC Petition is premature and should be dismissed as a presumptuous burden on scarce agency resources. If at some future time it is left to the Commission to regulate RBOC interLATA services, strict structural separation rules will be needed.

Respectfully submitted,

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ANTICOMPETITIVE and ANTICONSUMER PRACTICES of the REGIONAL BELL OPERATING COMPANIES since the BREAK-UP of the BELL SYSTEM

On January 1, 1984, the Bell System was divided between its competitive businesses and its monopoly telephone services. This settlement agreement has come to be known as the Modification of Final Judgment (MFJ), since it was formally a modification of a consent decree entered into by AT&T in 1956.

The operating companies that had provided local service as part of the Bell System were regrouped into seven Regional Bell Operating Companies (RBOCs): Ameritech, Bell Atlantic, BellSouth, NYNEX, Pacific Telesis, Southwestern Bell, and US West.

Nine years after the divestiture, which was intended to reduce anticompetitive abuses by those who control the monopoly local telephone exchange, there is now a clear pattern of abusive behavior by the RBOCs.

The magnitude of anticompetitive and anticonsumer abuses in which these companies have engaged (or are alleged to have engaged), even under federal and state government scrutiny, is overwhelming. These abuses of ratepayers, competitors, and consumers include: (1) overcharging and excess earnings, (2) inappropriate cross-subsidies, and (3) fraud and misrepresentation.

Anticonsumer and anticompetitive tactics are occurring within a legal and regulatory context in which the RBOCs have been barred from providing long distance services and from manufacturing telecommunications equipment and, until 1991, from providing information services. The RBOCs are demanding relief from those restrictions on the premise that current regulations satisfactorily protect consumers and competition against abuse. If the RBOCs succeed, the future harm to consumers and competitors, and the difficulty of effectively preventing illegal conduct, would dwarf the damage done since the breakup of the Bell System. Some of that damage is catalogued on the following pages.

Organizations representing consumers, business telecommunications users, competitive local telecommunications service providers, information service providers, telecommunications equipment manufacturers, and long distance companies believe that Congress should enact a national telecommunications policy founded on the principles of protecting consumers and fostering competition. The competitive marketplace serves the needs of telecommunications customers for fair prices, customer choice and product innovation. The progress America has made in bringing the benefits of competition to telephone consumers must not be turned back -- but that requires Congress to act now.

AMERITECH

Ameritech, through its Illinois, Indiana, Michigan, Ohio, and Wisconsin Bell Operating Companies, provides communications products to more than twelve million customers in the Midwest.

Ameritech and its Bell Operating Companies have improperly loaded millions of dollars onto the bills of Bell telephone customers for lobbying and other costs. Ratepayer money has been used to fund lobbying efforts to overturn the Modified Final Judgment's (MFJ) business restrictions. The effort has been for the benefit of shareholders, not Bell customers, and therefore these expenditures have been impermissible as a matter of law.[1]

Judicial Action

Ohio

Anticompetitive Practices -- In 1988, the Ohio Supreme Court held that Ohio Bell had provided "unjustly discriminatory" access rates and inferior access services to Allnet Communications, an intrastate long-distance provider.[2]

Regulatory Actions

Wisconsin

Overcharging Ratepayers -- In a 1990 audit of Ameritech's corporate expenses, the Wisconsin Public Service Commission (WPSC) found that over 30% of these corporate costs were improperly included in consumers' rates, including lobbying expenses, the cost of the Ameritech Senior Golf tournament, advertising directed at shareholders, etc. Neither Ameritech nor Wisconsin Bell formally challenged the Wisconsin Commission findings. Prorated over the five-state Ameritech service area, the total expenditures improperly allocated to the rate base would be $33.6 million.[3]

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[1] The Chicago Tribune and The Indianapolis Star, July 10, 1990; Communications Daily, July 12, 1990, p. 2.

[2] Allnet Communications Services, Inc. v. Ohio Pub. Util. Commission, 527 N.E. 2nd 840 (Ohio 1988).

[3] The Chicago Tribune and The Indianapolis Star, July 10, 1990; "Response of the Bell Companies to Anonymous Allegations Concerning Their Business Practices Since Divestiture." June 26, 1992, p. 18-19.

– In a separate proceeding that same year, the WPSC ordered Wisconsin Bell to refund $28 million in excess earnings. That amount was about one-third of the excess identified by the WPSC's own staff and expert witnesses for consumer intervenors. A strong dissenting opinion urged a substantially larger refund. Although consumer advocates successfully challenged the result in court, state regulators were slow in implementing the court directive, forcing customers to wait for larger refunds.[4]

Deceptive Marketing – In 1989, the Wisconsin Department of Justice filed a consent judgment in which Wisconsin Bell agreed to pay $1.2 million in civil forfeitures and penalties to the state and to stop packaging optional services, such as call waiting, into its basic rate, in violation of Public Service Commission rules. The Attorney General characterized the violations as "widespread, frequent and willful." This was the largest forfeiture in the history of the Wisconsin Department of Justice.[5]

Illinois

Overcharging Ratepayers – Illinois Bell overcharged its customers more than $3.3 million for lobbying, advertising, and other expenses according to a rate case decided by the Illinois Commerce Commission in 1989.[6]

Allegations

Illinois

Abuse of the Political Process – A Citizens Utility Board (CUB) of Illinois study in May 1992 found that Illinois Bell spent more than $2 million trying to win passage of a new telecommunications law which would allow automatic rate increases even while the phone company's costs were declining. CUB claimed that the companies stood to gain hundreds of millions of dollars in excessive profits from the legislation. The study also found that if the plan had been in place over the past five years, Illinois Bell would have overcharged its customers by up to $1.6 billion, and phone bills would have been 20% higher.[7]

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[4] Communications Week, March 19, 1990, p. 10.

[5] Press Release, State of Wisconsin Department of Justice, July 27, 1989; "Wisconsin Bell Should Pay in Full," Wisconsin State Journal, August 20, 1989; Wisconsin State Journal, August 20, 1989.

[6] "Response of the Bell Companies to Anonymous Allegations Concerning Their Business Practices Since Divestiture." June 26, 1992, p. 5.; The Chicago Sun Times, July 10, 1990; "CUB Seeks ICC Probe of Ameritech Expenses, Consumers May Be Paying Millions in Improper Charges," Citizens Utility Board [Illinois], July 9, 1990.

[7] United Press International, May 4, 1992. See also United Press International, May 13, 1992.

Michigan

Overcharging Ratepayers -- In 1991, the Michigan Public Service Commission accused Ameritech of paying $3.6 million to its regulated subsidiary for land worth $8.3 million, meaning ratepayers lost $4.7 million in the deal.[8]

Abuse of the Political Process -- According to the Detroit Free Press, Michigan Bell engaged in a blatant abuse of monopoly power by furnishing a telemarketing firm with the names of certain customers and allowing the firm to lobby them about pending legislation, and to offer to connect them toll-free with state legislators.[9]

Ohio

Cross-Subsidization -- In a 1986 audit, Ameritech was charged with cross-subsidization through equipment procurement. The National Association of Regulatory Utility Commissioners (NARUC) found that cost allocation methods for Ameritech's equipment procurement division did not assign costs to the appropriate subsidiary of the company. NARUC noted "the allocation methods may never be accurate."[10]

Wisconsin

Deceptive Marketing -- The Wisconsin Attorney General filed suit against Ameritech in March 1992 claiming that the company violated Wisconsin's deceptive advertising law, and its consumer protection act, in its promotion of a new Ameritech Mastercard. The suit accused Ameritech of misrepresenting its card as offering low interest rates, and of misrepresenting the card's "calling card" feature.[11]

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[8] Congressional Quarterly, February 23, 1991.

[9] C. Christoff, "Phone Users are Drafted in Rate War," Detroit Free Press, November 2, 1991.

[10] State of Ohio Public Utilities Commission, "The Ameritech Bell Operating Company Relationship: A Regulatory Perspective", August 8, 1986, p. 49.

[11] Chicago Tribune, March 6, 1992.

Regional

Illegal Equipment Manufacturing -- Ameritech and two other RBOCs appear to have violated the federal antitrust consent decree by investing millions of dollars in a San Diego company that manufactures cellular telephone equipment. The MFJ prohibits the Bell companies from manufacturing telecommunications equipment. Court decisions have interpreted the ban to also forbid investments in manufacturers.[12]

Cross-Subsidization -- Comments filed by AT&T with the FCC in 1992 claimed that Ameritech and the other RBOCs improperly implemented sharing and adjustment mechanisms. The comments said that most carriers allocated revenue-sharing amounts across the price cap services, but that Ameritech assigned its shared amounts only to baskets whose earnings topped the 12.25% threshold.[13]

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[12] Wall Street Journal, July 31, 1992, p. B4.

[13] Communications Daily, May 1, 1992, p. 8.

BELL ATLANTIC

Bell Atlantic, through its operating companies (Bell of Pennsylvania, Diamond State Telephone Company, Chesapeake and Potomac Companies, and New Jersey Bell), provides communications services to Delaware, the District of Columbia, Maryland, New Jersey, Pennsylvania, Virginia, and West Virginia.

Bell Atlantic's subsidiaries, Bell of Pennsylvania and C&P Telephone, have been charged with engaging in numerous deceptive techniques and marketing practices.

Judicial Action

District of Columbia

Fraudulent Business Practices -- In April 1993, a jury in the D.C. Superior Court found Bell Atlantic's mobile phone division guilty of fraudulently violating a contract with Cellular Phone Stores. Cellular Phone Stores, which is now defunct, was a local distributor for cellular phones and service for the Bell Atlantic subsidiary. The company was awarded $11 million in damages. The company claimed that Bell Atlantic concealed agreements with rival distributors in violation of their contract with Cellular Phone Stores in an effort to force them out of business.[1]

Regulatory Actions

Pennsylvania

Deceptive Marketing Practices -- Bell of Pennsylvania agreed in 1990 to pay $42 million in refunds and $5 million for consumer education to settle charges in two 1988 challenges before the Pennsylvania Public Utilities Commission (PPUC) that it used deceptive marketing techniques in selling optional services. The company sold customers more than they wanted, and misled customers into buying services not part of the regular phone service by offering them as a single package with basic services. Moreover, the optional services were available from competing companies. High pressure sales tactics were used to induce "a single welfare mother" (actually an investigator) to purchase $28.55 worth of monthly optional services when all she needed was $6.55 a month basic service.[2]

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[1] "Jury Finds Bell Atlantic Unit at Fault." The Washington Post, April 20, 1993, p. D4.

[2] "Response of the Bell Companies to Anonymous Allegations Concerning Their Business Practices Since Divestiture." June 26, 1992, p. 5; The Wall Street Journal, April 11, 1990.

Cover Ups -- Bell of Pennsylvania has been involved in ongoing proceedings before the PPUC regarding alleged misuse of corporate funds for charitable activities. Although the Bell was initially cleared of intentional wrongdoing and was assessed a small fine, the investigation was subsequently reopened amidst charges of cover-ups, illegal wiretaps, withheld information, and improper efforts to identify a whistleblower. At least one commissioner has publicly questioned the Bell's credibility and termed the case "a very serious one."[3]

Anticonsumer Behavior -- In 1990, the PPUC charged the company with improperly disconnecting service to customers who had already paid past-due bills or who had legitimate medical reasons for not paying their bills. The PUC documented 367 company violations of PUC rules, but noted that "Bell committed more than 3500 violations of residential service rules in the three-year period." The PPUC recommended the company be fined $1.1 million.[4] The company reached a settlement with the PPUC, agreeing to pay $1.7 million, most of which was to be used for customer education.[5]

Overcharging Ratepayers -- In February 1993, the PPUC entered into an agreement with Bell of Pennsylvania under which the company would refund $1 million to its customers. The refund was an estimate of charges made by Pennsylvania Bell to residential costumers for optional toll calling plans that the customers had either canceled or never ordered.[6]

Allegations

District of Columbia

Anticompetitive Practices -- District Cablevision of Washington, D.C. charged C&P Telephone Company with exercising discriminatory control over its fiber optics capacity. In 1990, District Cablevision asked C&P Telephone for permission to install optical fiber in C&P's duct space. Permission was refused because the company said "such fiber would give other companies, including District Cablevision, the ability to compete with C&P, particularly in the area of telephone users' access to long distance telephone carriers."[7]

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[3] Telecommunications Reports, January 9, 1989, p. 21; Wall Street Journal, September 15, 1989; Telecommunications Reports, November 6, 1989; BOC Week, September 18, 1989.

[4] Telecommunications Reports, October 15, 1990, p. 13.

[5] "Response of the Bell Companies to Anonymous Allegations Concerning Their Business Practices Since Divestiture." June 26, 1992, p. 5.

[6] Communications Daily, February 17, 1993, p 9.

[7] Affidavit of William A. Scheffler, October 16, 1990, in Memorandum of the National Cable Television Association, Inc., Opposing Motions to Remove the Information Services Restriction, United States v. Western Electric, Civ. No. 82-0192 (HHG).

Maryland

Cross-Subsidization and Ratepayer Overcharges -- An independent audit of C&P of Maryland performed for the Maryland Public Service Commission charged that ratepayers were footing the bill for unfavorable lease agreements that C&P of Maryland had with some of its affiliates. The audit stated that some of the leases were as much as $10-$12 per square foot above the market average, meaning the company might have been paying $4 million a year in excess rents. The auditors also called for the break-up of Bell Atlantic's private jet fleet, which would save ratepayers close to $500,000 annually.[8]

Virginia

Cross-Subsidization -- In March 1993, Virginia Metrotel, a potential competitive access provider, asked the Virginia Corporation Commission to investigate the rates charged by the local exchange operators for access services for which there is competition. Metrotel wants the Commission to ensure that the local exchange providers are not engaging in predatory pricing and cross-subsidization of competitive access services.[9]

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[8] Communications Daily, July 7, 1992, p. 7.

[9] Richmond Times-Dispatch, March 28, 1993, p. E1.

BELLSOUTH

BellSouth is an international holding company whose two major operating companies, Southern Bell and South Central Bell, provide telecommunications services to customers in nine Southeastern states -- Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee.

BellSouth and its subsidiaries have been found guilty of engaging in numerous anticompetitive activities resulting in irreparable damage to the marketplace.

Judicial Actions

South Carolina

Overcharging Ratepayers -- In 1991, the company was ordered by the South Carolina Supreme Court to refund between $10 and $12 million to customers for Touch-Tone service overcharges.[1]

Florida

Fraud and Deceit -- In October 1992, Southern Bell entered into an agreement with the State of Florida to settle grand jury charges that customers paid $15.2 million for calls they never made and services they never received. Southern Bell has also agreed to pay the State $1.4 million for the cost of the investigation, part of which will be used to cover the cost of regulatory oversight to which the company must now submit. The State Attorney General detailed abuses that included: billing customers for optional services they did not want; refusing to give credits to customers who suffered prolonged telephone outages; and fostering and rewarding fraudulent business practices.[2] Southern Bell faced similar charges in Georgia, North Carolina, and South Carolina in 1987 and 1988.[3]

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[1] BOC Week, July 1, 1991.

[2] "Southern Bell to Refund $15 Million," Miami Herald, October 10, 1992, p. A1; "Southern Bell Reaches Agreement ...." PR Newswire for Bell South, October 9, 1992; "Phone Company to Pay Back ...," Agence France Presse, October 10, 1992.

[3] Atlanta Journal and Constitution, July 14, 1992; Telecommunications Reports, July 20, 1992; Communications Daily, July 21, 1992.

Regulatory Actions

Alabama

Cross-Subsidization and Ratepayer Overcharges -- The Alabama Public Service Commission ordered South Central Bell to reduce its rates by $4 million for improperly diverting revenues to its advertising and publishing affiliates.[4]

Georgia

Anticompetitive Marketing -- In 1991, in an extensively documented case, the Georgia Public Utility Commission (GPUC) found that Southern Bell had undermined its competition in the voice messaging services (VMS) market by favoring its own service (MemoryCall™) by setting up technical barriers to competitors and withholding network changes from competitors until Southern Bell was prepared to roll out its own service. As GPUC put it, Southern Bell sought to "defeat competition in the VMS market through its influence on whether, how, and when competitors can access the local network." The Commission found evidence that BellSouth may have impeded the development of the VMS market for almost a decade, evidence of unfair marketing practices, and the possibility of predatory pricing.[5]

Overcharging Ratepayers -- On June 28, 1990, the Georgia Public Service Commission (GPSC) found that Southern Bell was overcharging its customers $180.7 million per year and ordered the company to make an immediate rate reduction of this amount, and to earmark an additional $90 million to fund the development of wide-area calling. The GPSC also lowered the rate of return 2.625%, in line with other utilities in the state. The case was appealed, and GPSC and Southern Bell reached a settlement reducing customer rates by $149 million.[6]

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[4] Telephone Week, March 16, 1992, p. 10.

[5] Georgia Public Service Commission, Order of the Commission Regarding Its Investigation into Southern Bell Telephone and Telegraph Company's Trial Provision of MemoryCall™ Service, Docket #4000-U, May 21, 1991.

[6] State Telephone Regulation Report, November 15, 1990, p. 7; Atlanta Journal and Constitution, June 28, 1990; Communications Daily, July 3, 1990.

Allegations

Alabama

Cross-Subsidization -- The former Lieutenant Governor of Alabama is among the plaintiffs in a $440 million class-action suit brought against South Central Bell. The suit charges that the company paid artificially high prices to an unregulated affiliated company that publishes the company's Yellow Pages.[7]

Louisiana

Cross-Subsidization -- A 1992 independent audit of affiliate transactions of South Central Bell revealed that the company was using a "maze of affiliate interrelationships and complex cost allocations to maximize profits at the expense of ratepayers." The audit also found that the company was currently overearning and would most likely continue to do so under the current regulatory regime. The audit, which was initially commissioned to see if South Central Bell could be less regulated, stated instead that they needed more regulation.[8]

North Carolina

Improper Political Pressure -- In 1990, the North Carolina Attorney General called for an investigation of Southern Bell's "attempt to direct the submission of fictitious letters in support of Caller ID." The company urged employees to write letters encouraging new regulatory freedom, but not to identify themselves as Southern Bell employees.[9]

Anticompetitive Practices -- For over two years, BellSouth denied Dun and Bradstreet access to phone facilities necessary to provide information services. In 1988, Dun and Bradstreet withdrew from the phone transmitted information market rather than expend resources in further litigation to create such services.[10]

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[7] Atlanta Journal and Constitution, April 15, 1992.

[8] "Report of Special Counsel Regarding Ratemaking and Financial Audit and Incentive Regulation Plan." Report written by M.R. Fontham, P.L. Zimmering, L.B. Halpern of Stone, Pigman, Walther, Wittmann & Hutchinson, 1992 for the Louisiana Public Service Commission (Docket U-17949, sub-docket A).

[9] Telecommunications Reports, February 26, 1990, p. 6, April 19, 1990, p. 19.

[10] Comments of Dun and Bradstreet Corporation Department of Justice Recommendations, United States v. Western Electric Company, Civil Action No. 82-0192, (HHG) at 35-36.

Regional

Misuse of Monopoly Revenues -- In 1991, an association of independent pay telephone owners charged that Southern Bell used monopoly revenues to pay commissions to the owners of pay phone locations. The complaint described the practice as "anticompetitive" and "not in the public interest."[11]

Refusal to Cooperate With Utility Commissioners' Audit -- BellSouth has refused to cooperate with the National Association of Regulatory Utility Commissioners (NARUC) coordinated audit, which the FCC has endorsed. The company has denied NARUC's audit team access to information. A NARUC report complained that "BellSouth is not willing to follow state rules and procedures." As a result of BellSouth's tactics, NARUC has been unable to carry out its audit.[12]

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[11] Telecommunications Reports, June 3, 1991.

[12] "Some RBOCs Are Not Cooperating with the NARUC's Joint State/Federal Audit Efforts." NARUC Staff Audit Oversight Committee, NARUC Summer Meeting, Seattle, Washington, July 28, 1992.

NYNEX

NYNEX, through the New York Telephone Company and the New England Telephone and Telegraph Company, provides telecommunications services for the Northeast region of the U.S., including the states of Massachusetts, Maine, New Hampshire, New York, Rhode Island, and Vermont.

NYNEX has been investigated, indicted, fined, and censured for gross misdeeds and serious violations of the AT&T Antitrust Consent Decree. Its subsidiary, New York Telephone Company, has been investigated for kickbacks, bribes, and other wrongdoing.

Judicial Actions

Federal Court

MFJ Violation Occurring in Tennessee -- In a decision handed down on February 16, 1993 by U.S. District Judge Harold Greene in the District of Columbia, NYNEX was found guilty of criminal contempt for violating the AT&T Antitrust Consent Decree. NYNEX had violated the consent decree by operating an information service company which was selling information to MCI. Greene stated that, "[T]he testimony in this case shows a pattern not only of inaction or inadvertent oversight in the face of an affirmative obligation, but of a conscious choice not to comply with the decree." Greene fined the company $1 million.[1]

New York

Illegal Firing -- In March 1993, an administrative law judge in New York ruled that NYNEX had illegally fired a whistle blower and must pay the employee $50,000 plus back pay. The judge found that Tobias Squitieri, formerly a Materiel Enterprises Company (MECO) employee, was fired due to his efforts to assist the New York Human Rights Division in investigating other complaints against NYNEX for unlawful dismissal.[2]

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[1] Opinion of Judge Harold H. Greene, United States v. NYNEX Corporation, Criminal No. 90-0238 (HHG) (filed February 16, 1993); "NYNEX Fined $1 Million for Violating AT&T Breakup Order," Associated Press, February 16, 1993.

[2] Communications Daily, March 29, 1993, p 2.

Regulatory Actions

Massachusetts

Cross-Subsidization -- In 1990, NYNEX was accused of improperly including lobbying and public relations costs among its regulated expenses, and the Massachusetts Department of Public Utilities (MDPU) disallowed rates of more than $12 million.[3] Under similar circumstances, in 1989, the MDPU disallowed $4.8 million for improperly allocated expenses.[4]

New York

Cross-Subsidization -- In 1990, NYNEX was charged with buying equipment at inflated prices from an unregulated NYNEX subsidiary, MECO, and siphoning profits from its regulated to its unregulated subsidiaries.[5]

--- NYNEX boosted its unregulated profits by having its New York Telephone subsidiary purchase overpriced services and equipment from MECO. After several years, a whistleblower and an investigative reporter prompted regulators to examine the transactions.[6]

--- Between 1984 and 1989, NYNEX drained revenues from the operating exchange companies into MECO, then asked for a rate increase to cover the revenue shortfall. MECO allegedly overcharged New York Telephone and New England Telephone by $118.5 million, and the subsidiaries passed on these inflated costs to ratepayers. Initially, NYNEX agreed to refund $50 million in overcharges to its telephone subsidiaries.[7] However, the Federal Communications Commission fined NYNEX $1.4 million after an audit and ordered $68 million in rate reductions. New York Attorney General Robert Abrams said NYNEX officials "resisted us every inch of the way" as his office tried to gather information. He called for a special inquiry to investigate the case.[8]

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[3] Telephony, March 5, 1990, p. 11.

[4] "Response of the Bell Companies to Anonymous Allegations Concerning Their Business Practices Since Divestiture." June 26, 1992, p. 20.

[5] New York Times, October 5, 1990.

[6] Dr. Mark N. Cooper, Divestiture Plus Eight: The Record of Bell Company Abuses Since The Break-Up of AT&T, Consumer Federation of America, December 1991, p. ES-5.

[7] Network World, February 27, 1989, p. 2. FCC Review of Affiliate Transactions Between NYNEX's LECs and Materiel Enterprises, December 29, 1989.

[8] Wall Street Journal, July 13, 1990; Wall Street Journal, January 9, 1990; BOC Week, June 10, 1991.

Reneging on Rate Freeze Agreements -- In 1988, NYNEX obtained the New York Public Service Commission's (NYPSC) permission to be freed of rate of return regulation in return for freezing rates, a so-called "social contract." A year later, NYNEX decided that the arrangement was not as profitable as it had hoped, asked to be allowed to violate the rate freeze, and requested an $832 million rate increase, in effect doubling existing residential phone rates. NYPSC rejected the requested increase and allowed only a $250 million increase.[9]

Allegations

New York

Internal Wrongdoing -- In 1990, New York Telephone was the subject of criminal and internal investigations of kickbacks, bribes, and other wrongdoing in its building maintenance operations. As a result of these probes, 28 of its employees resigned or were fired.[10]

Regional

Improper Business Conduct -- From 1984 to 1988, NYNEX was involved in what became known as "Perverts Conventions." The company and 30 of its suppliers had raucous, week-long sessions which allegedly involved improper, if not illegal, business contacts between employees of NYNEX's purchasing unit, MECO, and NYNEX suppliers, some of whom picked up the tab for festivities which apparently included "arranging for women." Suppliers who attended the conventions were more likely to get increased business from NYNEX than those who did not.[11]

Involvement in Equipment Manufacturing -- Along with two other RBOCs, NYNEX has invested several million dollars in a cellular telephone manufacturer. It maintains this investment despite a provision of the AT&T Antitrust Consent Decree that clearly forbids the Bells from manufacturing telephone equipment. For two years, NYNEX promoted the manufacturer's products without disclosing its own financial interest. Furthermore, NYNEX has not disclosed this interest while serving as part of an industry forum that is setting future cellular telephone standards.[12]

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[9] The Never Ending Story: Telephone Company Anticompetitive Behavior Since the Breakup of AT&T, National Cable Television Association, April 1991.

[10] Telephony, November 19, 1990.

[11] Wall Street Journal, July 12, 1990; The Never Ending Story: Telephone Company Anticompetitive Behavior Since the Breakup of AT&T, National Cable Television Association, April 1991.

[12] Wall Street Journal, July 31, 1992, p. B4.